

Serial No. 10/044,543  
Group Art Unit: 1638

### **REMARKS/ARGUMENTS**

Reconsideration of the present application is respectfully requested. Claims 1-55 are pending in the application. Claims 1-7, 10-14, 16-20, 22-27, 30-36, 39-55 are allowed. Claims 8, 9, 15, 21, 28, 29, 37, and 38 are rejected.

Claims 8, 15, 21, 28, and 37 have been amended. No new matter has been added to the claims by way of the amendment. It is respectfully requested that the amendments be entered.

#### **Rejections under 35 U.S.C. §101**

Claims 8-9, 15, 21, 28-29, and 37-38 are rejected under 35 U.S.C. §101 as directed toward non-statutory subject matter.

The Office Action states: "The claims are drawn to seeds produced from transgenic plants. Given meiotic segregation, some of the seeds will not possess the transgene. Thus, these seeds will be indistinguishable from naturally occurring seeds."

Claims 8, 15, 21, 28, and 37 have been amended to recited the Examiner's suggested wording: "... wherein the seed comprises the expression cassette." It is believed the amendment overcomes the rejection.

#### **Rejections under 35 U.S.C. §102(b)/103(a)**

The Examiner correctly presumes that the subject matter of the various claims were commonly owned at the time of invention.

Claims 8-9, 15, 21, 28-29, 37, and 38 are rejected under 35 U.S.C. §102(b) as anticipated by, or in the alternative, as obvious under 103(a) over Denyer et. al.

The Office Action states: "Denyer et al teach wheat plants produced from seeds, and which produce their own seeds.... The wheat seeds taught by the prior art differ from the claimed seeds only in their method of manufacture, namely their production from a transgenic plant. However, given the loss of genetic material

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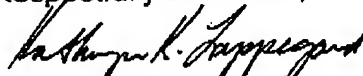
during meiosis, the production of transgenic plants would not confer a unique property to the claimed seeds which would distinguish them from the prior art seeds."

Claims 8, 15, 21, 28, and 37 have been amended to recited the Examiner's suggested wording: "... wherein the seed comprises the expression cassette." It is believed the amendment obviates the rejection.

**CONCLUSION**

On the basis of the above amendments and remarks, reconsideration of the application and its allowance are respectfully requested.

Respectfully submitted,



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